

Amendment No. 1 to SB0934

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Miller
Signature of Sponsor

AMEND Senate Bill No. 934*

House Bill No. 1159

by deleting from the printed bill all language following the enacting clause and replacing it with the following:

SECTION 1. Tennessee Code Annotated, Title 11, Chapter 4, is amended by adding Sections 2 through 18 of this act as a new, appropriately designated part.

SECTION 2. The title of this act is, and may be cited as the "Tennessee Forest Resources Conservation Act of 2004".

SECTION 3. The Tennessee general assembly finds that:

(1) Tennessee forests are an invaluable asset and vital to our citizens.

Our forests provide many benefits, including forest products and jobs and employment related to outdoor recreation and tourism thus benefiting the state's economy. Tennessee forests are critical to the protection of water quality, soil protection and erosion prevention, flood control, air quality, wildlife habitat, native biological diversity, and the state's scenic beauty. Our forests support the quality of life of present and future generations.

(2) The state of Tennessee has a substantial interest in maintaining healthy biodiverse forests that are managed with sustainable forestry practices. This act seeks to assure that businesses that rely on mature hardwoods, such as sawmills, cabinetry and furniture manufacturing, hardwood flooring and paneling and hardwood veneers, will be able to continue production of such value-added products. Over-harvesting and excessive conversion of Tennessee hardwood forests to softwood or pulpwood is not in the state's interest.

(3) In spite of evidence of over-cutting and impending wood shortages in the south, chipmills continue to proliferate without regulation. The economic and environmental resources which forests provide must be sustained for the future

by controlling the rate of extraction of forest resources.

(4) This part is enacted to ensure forest integrity and sustain timber resources in Tennessee for the long-term, and to create a system of permits for the establishment or expansion of facilities which aggregate or use a large volume of pulpwood. These pulpwood facilities rely upon highly mechanized clearcutting of large acreages annually. This harvesting method removes virtually all forest canopy cover. The provisions of this part shall be liberally construed and applied to effectuate these ends as remedial legislation.

SECTION 4. For the purposes of this part:

(1) “Chipmill” means a mobile or stationary facility that converts timber to chips;

(2) “Commissioner” means the commissioner of the department of environment and conservation or the commissioner's designee;

(3) “Drain area” means the area in which timber is being, has been, or will be harvested;

(4) “Growing-stock volume” means the cubic-foot volume of sound wood in growing stock trees at least 5.0 inches diameter breast height – outside bark , 4.5 feet above from a 1-foot stump to a minimum 4.0 inch top diameter outside bark of the central stem.

(5) “Landowner” means a person who owns title to land surface;

(6) “Ownership” means the classification of ownership of forest land used by the United States Forest Service. Non-industrial private forest (NIPF) land means privately owned land excluding forest industry land or forest industry leased-land.

(7) “Operator” and “Owner” as used in this part mean “Operator” and “Owner” as used in the context of silvicultural activities as defined in Tennessee Code Annotated, Section 69-3-103. “Owner” includes a person who has purchased timber for harvest or who owns timber that has been legally separated

from the land by deed or contract.

(8) "Person" as used in this part means "Person" as defined in Tennessee Code Annotated, Section 69-3-103.

(9) "Pulpwood" means trees severed from the ground, both hardwood and softwood, whether in whole or in part, that are ground or chipped and used to manufacture wood products, artificial fiber, or paper products;

(10) "Removal of substantially all forest canopy cover" means that the remaining stand is "nonstocked", being less than ten percent stocked with live trees.

(11) "Timber harvesting" means the cutting of timber, the removal of timber, the construction of roads or trails, or the alteration of existing roads or trails, and all other surface disturbances associated with the cutting or removal of timber.

(12) "Timberland" means forest land capable of producing twenty (20) cubic feet of industrial wood per acre per year and not withdrawn from timber utilization.

SECTION 5.

(a) The commissioner shall exercise the following authority and powers:

(1) Administer and enforce the provisions of this part and all rules and regulations and orders promulgated thereunder;

(2) Promulgate general rules and regulations to accomplish the purposes of this part;

(3) Conduct such investigations or inspections as the commissioner may deem necessary to ensure compliance with any provision of this part;

(4) Issue permits and registrations as provided by this part;

(5) Order the suspension or revocation, or both, of any registration or permit and issue orders and impose penalties as provided

in subsection (b) for any failure to comply with any provision of this part or of the terms or conditions of any registration or permit;

(6) Order the immediate cessation of any operation or facility that is started or continued without a registration or permit as required by the provisions of this part; and

(7) Institute and prosecute all such court actions as may be necessary to obtain the enforcement of any order issued in carrying out the provisions of this part.

(b)

(1) The commissioner shall adopt a schedule of civil administrative penalties to be applied for violations of this part including failure to register or re-register, failure to obtain or renew a permit where required, or violations of a permit issued under this part, which includes violations of the terms or conditions of any permit and acquisitions which exceed the limitations on pulpwood usage specified in the permit. Civil penalties shall be not less than \$500 per incident or violation and not more than \$2500 per incident or violation. The penalties may be increased for multiple or cumulative violations and shall specify whether each day in which a violation re-occurs or persists is subject to a penalty.

(2) If the commissioner believes that a facility is in violation of the limits on maximum tonnage of pulpwood or is taking pulpwood from counties not designated in the permit, the commissioner may order the facility to cease and desist acquisitions of pulpwood or impose such limits on acquisitions as the commissioner finds appropriate to assure compliance with the permit and with the limitations on pulpwood usage specified in the permit.

(3) The commissioner shall seek to recover from a violator all costs and expenditures incurred by the department in connection with

enforcement actions under this section.

(4) Orders of enforcement or for civil penalties shall be subject to appeal and review as provided for contested cases under the Uniform Administrative Procedures Act, title 4, chapter 5.

SECTION 6.

(a) Chipmills and other pulpwood facilities shall register with the department as follows:

(1) Any person operating any chipmill or other facility that uses wood chips as a primary material to produce any product, with the capacity to use fifty thousand (50,000) tons of pulpwood or more in the calendar year preceding the effective date of this part, shall register the facility as required by this section.

(2) Any person operating any log staging, log or chip transfer facility or log loading operation that received or transported fifty thousand (50,000) tons or more of whole logs or chips destined for chipmills or other facilities using pulpwood, in the calendar year preceding the effective date of this part, shall register the facility as required by this section. The facility or operation shall re-register annually unless the facility or operation is granted a permit under this part.

(3) The application for registration or re-registration shall specify the location and ownership of the mill, facility, or operation and, based upon a certification by the applicant, the maximum capacity and actual usage of pulpwood in the preceding calendar year. The application will be in such form and contain such other information as may be specified by the commissioner.

(4) Upon receipt of a fully and properly completed application for registration, together with the required fee, the mill, facility, or operation shall be registered and may operate as specified in a certificate of

registration issued by the department. Any change in the ownership or location of the mill, facility, or operation shall be reported to the commissioner in writing within thirty (30) days following the change.

(5) The chipmill or facility shall re-register annually unless the chipmill or facility is granted a permit under this part.

SECTION 7.

(a) Any person wishing to undertake the following projects or actions shall apply for a permit:

(1) Any proposed chipmill, or other facility that uses wood chips as a primary material to produce any product, that will have the capacity to use eighty thousand (80,000) tons of pulpwood or more in a year.

(2) Any chipmill or facility proposing to increase its capacity to use or its usage of pulpwood if the total proposed capacity would allow the use of eighty thousand (80,000) tons of pulpwood or more in a year.

(3) Any registered chipmill or facility which used eighty thousand (80,000) tons of pulpwood or more in the year 2001 or 2002, and proposing to increase its capacity to use or its annual usage of pulpwood by fifteen thousand (15,000) tons or more.

(4) Any proposed or relocating log staging, log or chip transfer facility, or log loading operation that will receive or transport over fifty thousand (50,000) tons or more of whole logs or chips in a year destined for chipmills or other facilities using pulpwood.

(5) Any chipmill, log staging, log or chip transfer facility, or log loading operation or other facility proposing to increase its capacity to use, or its usage of, pulpwood beyond an amount authorized by an existing permit under this subsection or intending to accept timber from a county not identified in an existing permit under this section.

(b) The information required on a permit application shall include the

following:

(1) The name and address of the owner of the proposed facility or the owner of the operation for which a permit is requested;

(2) The existing or proposed location of the facility designated by geographically referenced coordinates;

(3) The maximum pulpwood consumption capacity of the facility including chipped wood delivered to the facility from mobile and harvest site chipping equipment, if applicable. Capacity may be reported in terms of tons, cords, or board feet of roundwood, as the commissioner may specify.

(4) The diameter classes and grade of trees by species, the approximate percentage mix of species to be used, the impact on the existing and residual stands, and harvesting methods to the extent known.

(5) The approximate number of acres in which timber harvesting will result in the removal of substantially all forest canopy cover.

(6) The anticipated sources of the resource and the approximate percentage from each source such as contract logging, open market, and applicant owned land.

(7) The projected life of the facility;

(8) The projected employment at the facility;

(9) A list of all required permits and plans for air and water pollution and toxic materials handling which will be required or have been granted;

(10) A map of the area from which trees will be harvested to supply the facility. With the facility at the center, concentric circles in twenty-five (25) mile increments are designated "drain areas." The outermost circle shall represent the outermost limit from which the facility

will be supplied with timber. Each drain area and proposed harvest area, if known, shall be identified on the map;

(11) The supply of timber as known to the applicant and the annual harvest for each drain area required to supply the facility at maximum production. This information shall be stated separately for counties within Tennessee and counties in other states. Identification of areas within each drain area where procurement will be most intense shall be provided. Timber supply information shall exclude timber which is unavailable for harvest due to factors referred to in section 10(c).

(12) Information concerning current or proposed activities with owners and operators to protect water quality and ensure regeneration. Information on the applicant's cooperation with government forest resource management programs and compliance with environmental and resource protection laws.

(13) Such other information as the commissioner shall specify.

SECTION 8.

(a) The commissioner shall send notification regarding applications filed pursuant to this part within ten (10) days of receipt of an application for a permit to each member of the public and interested agencies who have requested such information. The commissioner shall require the applicant to publish a notice that an application for a permit is to be reviewed by the commissioner. The notice shall be in a form approved by the commissioner and shall be published in one (1) newspaper of general circulation in each county from which forest resources will be drawn according to the permit application. Notices shall include a summary of the information provided in the application and such other information as the commissioner may require. The notice shall state how the application and related materials may be examined, how public comments may be submitted, and the deadline for receipt of such comments. Notices of permit

applications shall be posted on the internet web site maintained by the department of environment and conservation.

(b) Comments on the permit application may be submitted within thirty-five (35) days following the date of mailing of the notice of application under subsection (a). The commissioner shall respond in writing to written comments at the time the permit is approved or denied. This response may be in the form of an addendum to the document that grants or denies a permit. Copies of the grant or denial of the permit and response to comments shall be provided to all persons who have commented.

(c) The commissioner shall give public notice and hold a public hearing on any permit application in any case in which there is sufficient public interest.

SECTION 9.

(a) Upon receipt of a permit application, the commissioner shall perform a forest resource review and prepare a report addressing the forest resources in the drain area and the impacts of the proposed facility or expansion of a facility.

(b) The commissioner of environment and conservation's natural heritage program and water quality division and such other staff as the commissioner may designate shall analyze the applicant's permit request with the cooperation and assistance of the Tennessee department of agriculture and the division of forestry, the department of labor and workforce development, the department of tourist development, the Tennessee wildlife resources agency, and such other public or private agencies as the commissioner of environment and conservation shall seek to involve.

SECTION 10.

(a) The commissioner shall prepare a forest resources review report. This report shall include an analysis of the impacts of granting the requested permit which may arise from both the operation of the facility and the timber harvesting necessary for operation of the facility, including cumulative effects.

(b) A forest resource review may be based upon the review and analysis of existing data and information. Nothing in this part shall be construed to require the collection of additional field data for a report. The report should consider the United States Forest Service and division of forestry Forest Inventory and Monitoring and Timber Product Output data, the Southern Forest Resource Assessment and subsequent up-dates, division of forestry mill surveys, and the trends and projections provided by these and other sources, including the federal Forest and Rangeland Renewable Resources Planning Act data and reports.

(c) Forest inventory data and estimated timber supply and availability shall be adjusted to reflect the actual availability of timber for harvest. Such adjustments shall use appropriate analytical models, including but not limited to, those used by the United States Forest Service which are capable of being applied to existing data. To the extent data and methods are available, the adjustments shall provide for timber which is unavailable for harvest because it is on forest industry land or forest industry-leased land controlled by an industrial forest owner other than the permit applicant; because it on is National forest land or other public ownership, is within or part of an officially designated natural resource or historic site, is located on soils or slopes which should not be disturbed or left unprotected by removal of forest cover under soil conservation standards, must be left to protect riparian areas under best management practices, may not be harvested due to land use controls or plans, is unavailable as shown by information concerning landowner objectives and attitudes, or is otherwise unavailable for harvest.

(d) The department of environment and conservation shall solicit and consider other available data concerning the amount or rate of growth, removal, conversion of hardwood forests to pine plantations and other measurements and projections of impacts. The department shall consider reports and data from academic sources which quantify or describe the changes, conditions, extent, or

impacts upon forests adjacent to or overlapping any part of the drain area.

(e) The report shall:

(1) Take into account the drain area usage and potential usage of forest resources by existing wood-using facilities and identify and evaluate potential impacts which the granting of the permit would have on available forest resources and existing and future timber supplies to be used by other wood-using industries. Impacts shall be calculated based on the maximum capacity of each wood-using facility which sources from the drain area of the proposed facility, including wood-using facilities located outside of Tennessee. The report should evaluate the effect of the applicant's maximum consumption on the supply of timber and other forest products available to existing industries, including producers and users of saw timber, and producers of dimensioned hardwood lumber, furniture, cabinetry, hardwood flooring and paneling, hardwood veneers, softwood saw timber and log building timbers, and other value-added solid wood products.

(2) Report the data, calculations and analysis which relate to the grant, denial, and permit conditions.

(f) The report shall also:

(1) Identify and evaluate potential impacts which the granting of the permit would have on existing or planned outdoor recreation and/or tourism activities or businesses.

(2) Identify and evaluate potential impacts which the granting of the permit would have on the environment and public health and safety. These impacts may include increased soil erosion and sedimentation, water quality or air quality degradation, fish and wildlife habitat loss, reduction in biological diversity, loss of unique native species including threatened and endangered species, degradation of wetlands, impacts on

roads and highways from transportation of materials to or from such facilities, and impacts from the operation of facilities which may generate wastes or pollutants or use toxic or injurious chemicals or other materials or methods used in the manufacturing process.

SECTION 11

(a) Every permit for a facility shall specify the maximum tonnage of pulpwood which may be consumed from each county in Tennessee within the drain area. Every permit granted shall be for period of two (2) years. Permits may be renewed for successive two (2) year periods.

(b)

(1) No permit shall be granted if the growing-stock volume to removal ratio for timber actually available on timberlands in non-industrial private forest land ownership in the drain area is currently, or is projected to become, less than 1 to 1 for either hardwoods or softwoods during the life of the facility. If the growth to removal ratio is or is projected to fall below 1 to 1 in any county in the drain area that county shall not be included in the counties from which consumption is allowed under a permit.

(2) Growing-stock volume to removal projections shall include the removals attributable to the operation of the proposed facility. The ratio of growing-stock volume to removals shall be calculated separately for hardwoods of the species proposed to be used by the applicant facility and for softwoods of the species proposed to be used by the applicant facility. Appropriate allowance or adjustments shall be made for loss due to mortality. Allowance or adjustments for sampling errors or other sources of error or uncertainty in the data used to calculate growth to removal shall ensure that the ratio of growth to removal in the drain area is not projected to fall below 1 to 1 at the 95% level of confidence.

(c) No permit shall be granted if existing hardwood forest land must be converted to softwood production in order to supply the facility over its lifetime.

(d) The commissioner may, by regulation, adopt other criteria for denial or conditioning of permits based upon a projected reduction in the supply of timber and other forest products available to existing value added manufacturing operations recognized in section 10(e)(1).

Section 12.

(a) If the commissioner grants a permit but there are adverse impacts identified by the forest resource report, the permit may be granted with conditions to mitigate or monitor the impacts of the operation of a proposed facility under a permit. Such conditions may include:

(1) provisions for periodic or ongoing forest inventories in the drain area. Inventory requirements may be met by financial or in-kind support from the permit holder for public agency or academic inventories of forest conditions and forest health measurements;

(2) reforestation to assure no net loss of native hardwood forests and desirable sawtimber species and age classes;

(3) the use and monitoring of specified agreements between the permit holder and owners and operators to assure compliance with timber harvesting Best Management Practices and recognized certification standards for harvesting and any appropriate additional protection for water body and riparian zones, and wetlands;

(4) specification for the minimum use and other conditions on chemical applications to protect employees, the public and the forest environment;

(5) provisions for avoiding loss of soil and soil productivity resulting from harvesting and other forest management activities on forest lands which supply pulpwood to the facility;

(6) provisions for measures necessary to conservation of biological diversity and wildlife habitats and the conservation of forest plants and animals including aquatic fauna;

(7) provisions necessary for the protection of biologically rich forest areas within the drain area from impacts attributable to the supplying of pulpwood to the facility; and

(8) provisions necessary to the protection of state parks, other publicly held lands, and lands of ecological, geologic, cultural or historic significance, from impacts attributable to the supplying of pulpwood to the facility.

SECTION 13.

(a) Any person denied a permit or granted a permit with conditions pursuant to this section may secure a review of such denial or conditions by filing with the commissioner a written statement of appeal setting forth the grounds and reasons for the appeal and requesting a hearing before Water Quality Control Board. All such appeals shall be resolved through the process for contested case hearings before the board under the Uniform Administrative Procedures Act, §§ 4-5-101 et seq. If a petition for appeal of a permit denial or appeal of conditions attached to a permit is not filed within thirty (30) days after the date the denial or permit with conditions is issued, the applicant shall be deemed to have consented to the denial or permit with conditions and the commissioner's decision shall become final and not subject to review.

(b) Any person who has submitted comments under section 7 may appeal if aggrieved by the decision of the commissioner to grant a permit or to grant a permit with conditions. Any aggrieved person shall have standing to appeal the decision of the commissioner as a matter of law. The appeal shall be filed within thirty (30) calendar days following notice of the commissioner's decision which shall be combined with the commissioner's response to

comments. All such appeals shall be resolved through the process for contested case hearings before the board under the Uniform Administrative Procedures Act, §§ 4-5-101 et seq. The board, or the administrative law judge assigned to the contested case, may stay the grant of a permit if it appears likely that the permit should not have been granted under the provisions of this part.

(c) Any final order or determination of an appeal by the board under this section shall be subject to judicial review pursuant to the Uniform Administrative Procedures Act, §§ 4-5-101 et seq.

SECTION 14.

(a) An application for a permit renewal shall be made not less than forty-five (45) days preceding the expiration of an existing permit. The application to renew a permit shall have such information as the commissioner may require and be processed as specified in this part. Impacts identified since the completion of the forest resources review report shall be considered at the time of application for a renewed permit, but no forest resources review or report shall be required unless the commissioner finds that significant or substantial changes in forest resources or impacts have occurred which require the preparation of a new report so that the terms and conditions of a permit may be modified to respond to changed circumstances. No renewal of a permit shall allow an increase in capacity or the consumption of pulpwood which would otherwise require a separate permit application under the provisions of this part.

(b) Each application for registration shall be accompanied by a fee set by the commissioner. The commissioner may adopt a sliding schedule of fees relating to the volume of pulpwood usage and such other factors as the commissioner deems appropriate. The commissioner shall set a schedule of initial registration fees and annual or biannual registration maintenance fees sufficient to defray all the costs of the department's operations under this part apart from the costs of permit processing or monitoring activities to be defrayed

by fees which accompany applications for permits or re-applications for permits.

(c) Each permit application shall be accompanied by a fee sufficient to defray all of the costs of the permitting process, including the forest resource study. Each application for renewal of a permit shall be accompanied by a fee sufficient to defray all of the costs of the permitting process, including a forest resource study if a study is required by the commissioner in the course of reviewing an application of renewal of a permit. The fee for renewal of a permit or the maintenance fee for a permit may also include an amount to defray a portion of the costs of the department's monitoring, enforcement and other ongoing operations under this part.

(d) The commissioner shall specify the fees required under this part by regulations adopted in compliance with the Uniform Administrative Procedures Act, title 4, chapter 5. The initial schedule of fees, and procedures for applications, registration and permits may be specified in public necessity regulations to allow the immediate implementation of this part.

SECTION 15. The commissioner shall enter into such interagency agreements with the department of agriculture and the division of forestry that may be necessary to effectuate this act. The department of agriculture and the division of forestry shall coordinate all programs concerning forestry, soil and water protection and conservation and otherwise actively cooperate with the department of environment and conservation in carrying out the policies of this act.

SECTION 16. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 17. The commissioner is directed to file with the attorney general proposed rules to be published pursuant to the Uniform Administrative Procedures Act, title 4, chapter 5, to implement the provisions of this act, within one hundred eighty (180)

days of the effective date of this act.

SECTION 18. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2004, the public welfare requiring it.